



OFFICE OF THE JUDGE PRESIDENT  
MR JUSTICE E.M MAKGOBA

**LIMPOPO DIVISION OF THE HIGH COURT PRACTICE DIRECTIVE 01/2019**

Following the recent Full Bench decisions in **ABSA Bank Ltd v Mokebe and Related Cases 2018 (6) SA 492 (GJ)**

and

**Standard Bank of South Africa Ltd v Hendricks and Another and Related Cases 2019 (2) SA 620 (WCC)**

it is appropriate to issue this Practice Directive to regulate the proceedings in Foreclosure matters (Execution when Property is or appears to be, the Defendant's Primary Home).

1. In every matter where a judgment is sought for execution against immovable property, which might be the defendant's primary residence or home, an affidavit is required in support of the application for judgment. Such affidavit shall also deal with all the items referred to in amended Rule 46A.
2. An order declaring property specially executable shall only be granted by the court if the application has been served on the respondent PERSONALLY, alternatively in a manner as authorised by the Court. If efforts to serve personally prove impossible, the court may authorise service at the place of employment of the respondent, or on a Saturday,




or on a person over the age of 16 at the *domicilium citandi*, or in any other way which may bring the matter to the attention of the respondent. Furthermore, all e-mail and/or other correspondence which may be relevant to the respondent being aware of the date of hearing should also be attached. If the property is not the primary residence (for example where served on a tenant, and the respondent no longer resides there) personal service is not required.

3. Where action proceedings have been instituted and the provisions of Rule 31(5) are applicable, the Registrar shall refer the application for the money judgment and the declaration that the property is executable, to open court. The Registrar may not grant the money judgment separately, if the debt is related to a mortgage bond over an immovable property.
4. Note: When arrears are low, and/or the period of non-payment is a few weeks/months, the court may, in its discretion, postpone the matter with an order that it may not be set down before the expiry of 6 months and that notice of set down should again be served. At the adjourned date, an affidavit should be filed, setting out what efforts the Bank has made to effect settlement and/or prevent foreclosure.
5. NB: Default judgment should not be granted for the amount and the order for execution only postponed as this will defeat the object of postponing the matter i.e. to allow the consumer to take advice and seek to make arrangements to bring the arrears up to date or purge the



default. The creditor should not seek and the court (not registrar) should not give any money judgment (either for the accelerated total balance or otherwise) unrelated to an order declaring the property executable; if a money judgment is given and then executed against movables, that precludes the debtor from reinstating the bond by paying the arrears (See NCA s. 129(4)(b)).

6. The ideal objective of the court's enquiry under R46A (infra) must be to establish a payment plan for the arrears, thereby attaining the reinstatement of the arrears, and so nullify the accelerated total balance. (Rule 46A(2)(a)(ii)).
7. A certificate of balance and payment history may be handed in at the hearing. If there is a failure to comply with the provisions of s 129 of the NCA, an order pursuant to s 130(4)(b) of the NCA may be issued.

  
**EM. MAKGOBA**  
**JUDGE PRESIDENT**  
**HIGH COURT OF SOUTH AFRICA**  
**LIMPOPO DIVISION, POLOKWANE**  
**29 APRIL 2019**

